

# CHAPTER 1

## GENERAL PRINCIPLES

- 1.1 GENERALLY
- 1.2 DEFINITIONS
  - 1.2.1 COMMENTS
- 1.3 WITHIN THE STATE
- 1.4 *MENS REA*
- 1.5 ACCEPTANCE OF PLEA BY THE COURT
- 1.6 DOUBLE JEOPARDY

### 1.1 GENERALLY

Various terms used when prosecuting DUI cases have unique definitions and usage. Those definitions can be found in statute and case law. The following are the important definitions and concepts relevant to DUI prosecution.

### 1.2 DEFINITIONS

The Utah Code contains most of the relevant definitions for DUI prosecutions:

#### **32A-1-105. Definitions.**

As used in this title:

(2) **"Alcoholic beverages"** means "beer" and "liquor" as the terms are defined in this section.

(5) (a) **"Beer"** means any product that:

- (i) contains 63/100 of 1% of alcohol by volume or 1/2 of 1% of alcohol by weight, but not more than 4% of alcohol by volume or 3.2% by weight; and
- (ii) is obtained by fermentation, infusion, or decoction of any malted grain.

- (b) Beer may or may not contain hops or other vegetable products.
- (c) Beer includes a product that:
  - (i) contains alcohol in the percentages described in Subsection (5)(a); and
  - (ii) is referred to as:
    - (A) malt liquor;
    - (B) malted beverages; or
    - (C) malt coolers.

(22) **"Intoxicated"** means that to a degree that is unlawful under Section 76-9-701 a person is under the influence of:

- (a) an alcoholic beverage;
- (b) a controlled substance;
- (c) a substance having the property of releasing toxic vapors; or
- (d) a combination of Subsections (22)(a) through (c).

25) (a) **"Liquor"** means alcohol, or any alcoholic, spirituous, vinous, fermented, malt, or other liquid, or combination of liquids, a part of which is spirituous, vinous, or fermented, and all other drinks, or drinkable liquids that contain more than 1/2 of 1% of alcohol by volume and is suitable to use for beverage purposes.

(b) **"Liquor" does not include** any beverage defined as a beer, malt liquor, or malted beverage that has an alcohol content of less than 4% alcohol by volume.

(30) **"Minor"** means any person under the age of 21 years.

(60) (a) **"Wine"** means any alcoholic beverage obtained by the fermentation of the natural sugar content of fruits, plants, honey, or milk, or any other like substance, whether or not other ingredients are added.

(b) **"Wine" is considered "liquor"** for purposes of this title, except as otherwise provided in this title.

#### **41-6a-102. Definitions.**

(7) **"Commissioner"** means the commissioner of the Department of Public Safety.

(10) **"Department"** means the Department of Public Safety.

(20) **"Highway"** means the entire width between property lines of every way or place of any nature when any part of it is open to the use of the public as a matter of right for vehicular travel.

33) (a) **"Motor vehicle"** means a vehicle which is self-propelled and every vehicle which is propelled by electric power obtained from overhead trolley wires, but not operated upon rails.

(b) **"Motor vehicle" does not include** vehicles moved solely by human power and motorized wheel chairs.

(38) **"Operator"** means a person who is in actual physical control of a vehicle.

(70) **"Vehicle"** means a device in, on, or by which a person or property is or may be transported or drawn on a highway, except devices used exclusively on stationary rails or tracks.

#### **41-6a-501. Definitions.**

(1) As used in this part:

(a) **"Assessment"** means an in-depth clinical interview with a licensed mental health therapist:

(i) used to determine if a person is in need of:

(A) substance abuse treatment that is obtained at a substance abuse program;

(B) an educational series; or

(C) a combination of Subsections (1)(a)(i)(A) and (B); and

(ii) that is approved by the Board of Substance Abuse and Mental Health in accordance with Section 62A-15-105.

(b) **"Educational series"** means an educational series obtained at a substance abuse program that is approved by the Board of Substance Abuse and Mental Health in accordance with Section 62A-15-105.

(c) **"Negligence"** means simple negligence, the failure to exercise that degree of care that an ordinarily reasonable and prudent person exercises

under like or similar circumstances.

(d) **"Screening"** means a preliminary appraisal of a person:

(i) used to determine if the person is in need of:

(A) an assessment; or

(B) an educational series; and

(ii) that is approved by the Board of Substance Abuse and Mental Health in accordance with Section 62A-15-105.

(e) **"Serious bodily injury"** means bodily injury that creates or causes:

(i) serious permanent disfigurement;

(ii) protracted loss or impairment of the function of any bodily member or organ; or

(iii) a substantial risk of death.

(f) **"Substance abuse treatment"** means treatment obtained at a substance abuse program that is approved by the Board of Substance Abuse and Mental Health in accordance with Section 62A-15-105.

(g) **"Substance abuse treatment program"** means a state licensed substance abuse program.

(h) (i) **"Vehicle" or "motor vehicle"** means a vehicle or motor vehicle as defined in Section 41-6a-102; and

(ii) **"Vehicle" or "motor vehicle" includes:**

(A) an off-highway vehicle as defined under Section 41-22-2; and

(B) a motorboat as defined in Section 73-18-2.

(2) As used in Section 41-6a-503:

(a) **"Conviction"** means any conviction for a violation of:

(i) driving under the influence under Section 41-6a-502;

(ii) alcohol, any drug, or a combination of both-related reckless driving under Sections 41-6a-512 and 41-6a-528;

(iii) driving with any measurable controlled substance that is taken illegally in the body under Section 41-6a-517;

(iv) local ordinances similar to Section 41-6a-502 or alcohol, any drug, or a combination of both-related reckless driving adopted in compliance with

Section 41-6a-510;

(v) automobile homicide under Section 76-5-207;

(vi) Subsection 58-37-8(2)(g);

(vii) a violation described in Subsections (2)(a)(i) through (vi), which judgment of conviction is reduced under Section 76-3-402; or

(viii) statutes or ordinances previously in effect in this state or in effect in any other state, the United States, or any district, possession, or territory of the United States which would constitute a violation of Section 41-6a-502 or alcohol, any drug, or a combination of both-related reckless driving if committed in this state, including punishments administered under 10 U.S.C. Sec. 815.

(b) A plea of guilty or no contest to a violation described in Subsections (2)(a)(i) through (viii) which plea is held in abeyance under Title 77, Chapter 2a, Pleas in Abeyance, is the equivalent of a conviction, even if the charge has been subsequently reduced or dismissed in accordance with the plea in abeyance agreement, for purposes of:

(i) enhancement of penalties under:

(A) this Chapter 6a, Part 5, Driving Under the Influence and Reckless Driving; and

(B) automobile homicide under Section 76-5-207; and

(ii) expungement under Section 77-18-12.

#### **41-6a-517. Definitions - Driving with any measurable controlled substance in the body**

(1) As used in this section:

(a) **"Controlled substance"** means any substance scheduled under Section 58-37-4.

(b) **"Practitioner"** has the same meaning as provided in Section 58-37-2.

(c) **"Prescribe"** has the same meaning as provided in Section 58-37-2.

(d) **"Prescription"** has the same meaning as provided in Section 58-37-2.

## **41-6a-518. Ignition interlock devices**

(1) As used in this section:

(a) **"Commissioner"** means the commissioner of the Department of Public Safety.

(b) **"Ignition interlock system" or "system"** means a constant monitoring device or any similar device certified by the commissioner that prevents a motor vehicle from being started or continuously operated without first determining the driver's breath alcohol concentration.

(c) **"Probation provider"** means the supervisor and monitor of the ignition interlock system required as a condition of probation who contracts with the court in accordance with Subsections 41-6a-507(2) and (3).

### **41-6a-518.2. Interlock restricted driver**

(1) As used in this section:

(a) **"ignition interlock system"** means a constant monitoring device or any similar device that:

(i) is in working order at the time of operation or actual physical control; and

(ii) is certified by the Commissioner of Public Safety in accordance with Subsection 41-6a-518(8); and

(b) (i) **"interlock restricted driver"** means a person who:

(A) has been ordered by a court or the Board of Pardons and Parole as a condition of probation or parole not to operate a motor vehicle without an ignition interlock system;

(B) (I) within the last three years has been convicted of an offense that occurred after May 1, 2006 which would be a conviction as defined under Section 41-6a-501; and

(II) the conviction described under Subsection (1)(b)(i)(B)(I) is within ten years of one or more prior convictions as defined in Subsection 41-6a-501(2);

(C) within the last three years has been convicted of a violation of this

section;

(D) within the last three years has had the person's driving privilege revoked for refusal to submit to a chemical test under Section 41-6a-520, which refusal occurred after May 1, 2006;

(E) within the last six years has been convicted of a felony violation of Section 41-6a-502 for an offense that occurred after May 1, 2006; or

(F) within the last ten years has been convicted of automobile homicide under Section 76-5-207 for an offense that occurred after May 1, 2006; and

(ii) **"interlock restricted driver" does not include** a person if:

(A) the person's conviction described in Subsection (1)(b)(i)(B)(I) is a conviction under Section 41-6a-517; and

(B) all of the person's prior convictions described in Subsection (1)(b)(i)(B)(II) are convictions under Section 41-6a-517.

### 1.2.1 COMMENTS

In order to obviate any possible confusion, the Utah Court of Appeals has ruled that person riding a horse while intoxicated (RAHWI) cannot be convicted of DUI;

The defendant's conviction of operating a vehicle under the influence of alcohol denied him due process of law because the statute under which he was convicted (former § 41-6-44 (see now § 41-6a-502)) did not give him adequate notice that being intoxicated while riding a horse was a crime. The definition of "vehicle" in this section cannot be legitimately read to include horses. *State v. Blowers*, 717 P.2d 1321 (Utah 1986).

### 1.3 WITHIN THE STATE

Unlike the majority of traffic violations contained in the Utah Code, DUI is a crime anywhere "within this state". Essentially this means that it is a crime to be DUI regardless of whether the suspect is on a public highway or public property. The possibility of a person being arrested for DUI for using his riding lawn mower in his backyard while intoxicated is certainly a reality under the law.

## 1.4 MENS REA

Driving Under the Influence, like the majority of the traffic code is, essentially, a strict liability offense. Essentially, if the person is in actual physical control of a motor vehicle and is impaired, he or she is therefore guilty of the offense of DUI.

In, *Greaves v. State*, 528 P.2d 805 (Utah 1974), the Utah Supreme Court stated:

[I]t is well enough known to require no elaboration that driving while under the influence of liquor is so hazardous that it involves the public interest and welfare, and consequently, is a proper subject for regulation and control by law; and this is also true of the operation of motor vehicles.

We suppose that the danger to one's self and to others, which it is the purpose of this statute to guard against, would be just as great, however the alcohol got into the blood. In determining whether the statute carries out that purpose, it should not be given any tortured or strained application to conjectured or hypothetical situations, but should be understood and applied in a fair, realistic and practical manner to the situation confronted, and in the awareness that all of the law is not stated in one sentence or one paragraph, but a statute is to be construed and applied in relation to other requirements of the law.

This statute is part of the Motor Vehicle Code, whose purpose is to govern the safety of the use and operation of motor vehicles. Inherent in its language is the legislative determination and declaration that the stated blood content of .10 percent of alcohol makes it dangerous for a person to operate or be in control of a vehicle. This is one of those situations where from the doing of the prohibited act one is presumed to intend its natural consequences; and it is the intentional doing of the act prohibited by law which constitutes the offense.<sup>5</sup> To be considered in this connection and consistent with the conclusion we have reached is Section 41-6-12 of the Motor Vehicle Act which ***expressly states that it is "a misdemeanor for any person to do any act forbidden . . . in this***

**act."**

*Id.*, at 807 emphasis added

## **1.5 ACCEPTANCE OF PLEA BY THE COURT**

The legislature has recently imposed restrictions on the acceptance of a guilty or no contest plea in impaired driving cases:

### **41-6a-513. Acceptance of plea of guilty to DUI - Restrictions - Verification of prior violations - Prosecutor to examine defendant's record.**

(1) A court may not accept a plea of guilty or no contest to a charge under Section 41-6a-502 unless:

(a) the prosecutor agrees to the plea:

(i) in open court;

(ii) in writing; or

(iii) by another means of communication which the court finds adequate to record the prosecutor's agreement;

(b) the charge is filed by information as defined under Section 77-1-3; or

(c) the court receives verification from a law enforcement agency that the defendant's driver license record contains no record of a conviction, arrest, or charge for:

(i) more than one prior violation within the previous ten years of any offense which, if the defendant were convicted, would qualify as a "conviction" as defined under Subsection 41-6a-501(2);

(ii) a felony violation of Section 41-6a-502; or

(iii) automobile homicide under Section 76-5-207.

(2) A verification under Subsection (1)(c) may be made by:

- (a) a written indication on the citation;
- (b) a separate written document; or
- (c) any other means which the court finds adequate to record the law enforcement agency's verification.

(3) (a) Prior to agreeing to a plea of guilty or no contest or to filing an information under Subsection (1), the prosecutor shall examine the criminal history or driver license record of the defendant.

(b) If the defendant's record contains a conviction or unresolved arrest or charge for an offense listed in Subsections (1)(c)(i) through (iii), a plea may only be accepted if:

(i) approved by:

- (A) a district attorney;
- (B) a deputy district attorney;
- (C) a county attorney;
- (D) a deputy county attorney;
- (E) the attorney general; or
- (F) an assistant attorney general; and

(ii) the attorney giving approval under Subsection (3)(b)(i) has felony jurisdiction over the case.

(4) A plea of guilty or no contest is not made invalid by the failure of the court, prosecutor, or law enforcement agency to comply with this section.

## **1.6 DOUBLE JEOPARDY**

The Utah appellate courts have held that multiple sanctions possibly faced by DUI defendants do not raise a double jeopardy concern. In *State v. Arbon and Milligan*, 909 P.2d 1270 (Utah Ct. App. 1996), the Court of Appeals was called upon to determine whether a DUI criminal prosecution subsequent to the administrative suspension of a driving privilege constituted double jeopardy.

The purpose of this administrative procedure is not to punish the inebriated drivers; such persons are subject to separate criminal

prosecution for the purpose of punishment. The administrative revocation proceedings are to protect the public, not to punish individual drivers. Other states agree that the historical purpose of driver's license suspension after a DUI arrest is remedial--i.e., to protect the public from unsafe drivers--not punitive.

\* \* \*

Based on past declarations by the United States Supreme Court, Utah Supreme Court, and other state courts, along with the traditional notion that licensing schemes in general are designed for public protection, we conclude that administrative driver's license suspension procedures are historically regarded not to be punishment under the Double Jeopardy Clause. Next, we consider the purpose of the specific statute at issue.

Internal citations omitted.

Additionally, the legislative intent behind Utah Code Ann. §§ 53-3-222 to -223, the Legislature has been explicitly stated:

The Legislature finds that a primary purpose of this title relating to suspension or revocation of a person's license or privilege to drive a motor vehicle for driving with a blood alcohol content above a certain level or while under the influence of alcohol . . . is protecting persons on highways by quickly removing from the highways those persons who have shown they are safety hazards.

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